



Finance Act 1996

1996 CHAPTER 8

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER VI

MISCELLANEOUS PROVISIONS

Participators in close companies

174 Attribution of gains to participators in non-resident companies

- (1) Section 13 of the Taxation of Chargeable Gains Act 1992 (attribution of gains to members of non-resident companies) shall be amended in accordance with subsections (2) to (9) below.
- (2) In subsection (2) (persons subject to charge on gain to company), for “holds shares” there shall be substituted “is a participator”.
- (3) For subsections (3) and (4) (part of gain attributed to person subject to charge) there shall be substituted the following subsections—
 - “(3) That part shall be equal to the proportion of the gain that corresponds to the extent of the participator’s interest as a participator in the company.
 - (4) Subsection (2) above shall not apply in the case of any participator in the company to which the gain accrues where the aggregate amount falling under that subsection to be apportioned to him and to persons connected with him does not exceed one twentieth of the gain.”
- (4) In subsection (5), paragraph (a) (section not to apply where gain distributed within two years) shall be omitted; and after that subsection there shall be inserted the following subsection—

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“(5A) Where—

- (a) any amount of capital gains tax is paid by a person in pursuance of subsection (2) above, and
- (b) an amount in respect of the chargeable gain is distributed (either by way of dividend or distribution of capital or on the dissolution of the company) within 2 years from the time when the chargeable gain accrued to the company,

that amount of tax (so far as neither reimbursed by the company nor applied as a deduction under subsection (7) below) shall be applied for reducing or extinguishing any liability of that person to income tax in respect of the distribution or (in the case of a distribution falling to be treated as a disposal on which a chargeable gain accrues to that person) to any capital gains tax in respect of the distribution.”

- (5) In subsection (7) (deduction of tax paid in computing gain on shares in the company)—
 - (a) for “not reimbursed by the company” there shall be inserted “neither reimbursed by the company nor applied under subsection (5A) above for reducing any liability to tax”;
 - (b) for “the shares by reference to which the tax was paid” there shall be substituted “any asset representing his interest as a participator in the company.”

(6) After subsection (7) there shall be inserted the following subsection—

“(7A) In ascertaining for the purposes of subsection (5A) or (7) above the amount of capital gains tax or income tax chargeable on any person for any year on or in respect of any chargeable gain or distribution—

- (a) any such distribution as is mentioned in subsection (5A)(b) above and falls to be treated as income of that person for that year shall be regarded as forming the highest part of the income on which he is chargeable to tax for the year;
- (b) any gain accruing in that year on the disposal by that person of any asset representing his interest as a participator in the company shall be regarded as forming the highest part of the gains on which he is chargeable to tax for that year;
- (c) where any such distribution as is mentioned in subsection (5A)(b) above falls to be treated as a disposal on which a gain accrues on which that person is so chargeable, that gain shall be regarded as forming the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (b) above; and
- (d) any gain treated as accruing to that person in that year by virtue of subsection (2) above shall be regarded as the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (c) above.”

(7) In subsection (9) (cases where person charged is a company)—

- (a) for “the person owning any of the shares in the company” there shall be substituted “a person who is a participator in the company”;
- (b) for the words from “to the shares” onwards there shall be substituted “to the participating company’s interest as a participator in the company to which the gain accrues shall be further apportioned among the participators in the participating company according to the extent of their respective interests as

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participators, and subsection (2) above shall apply to them accordingly in relation to the amounts further apportioned, and so on through any number of companies.”

(8) In subsection (10) (application to trustees), for “owning shares in the company” there shall be substituted “who are participators in the company, or in any company amongst the participators in which the gain is apportioned under subsection (9) above.”.

(9) After subsection (11) there shall be inserted the following subsections—

“(12) In this section “participator”, in relation to a company, has the meaning given by section 417(1) of the Taxes Act for the purposes of Part XI of that Act (close companies).

(13) In this section—

(a) references to a person’s interest as a participator in a company are references to the interest in the company which is represented by all the factors by reference to which he falls to be treated as such a participator; and

(b) references to the extent of such an interest are references to the proportion of the interests as participators of all the participators in the company (including any who are not resident or ordinarily resident in the United Kingdom) which on a just and reasonable apportionment is represented by that interest.

(14) For the purposes of this section, where—

(a) the interest of any person in a company is wholly or partly represented by an interest which he has under any settlement (“his beneficial interest”), and

(b) his beneficial interest is the factor, or one of the factors, by reference to which that person would be treated (apart from this subsection) as having an interest as a participator in that company,

the interest as a participator in that company which would be that person’s shall be deemed, to the extent that it is represented by his beneficial interest, to be an interest of the trustees of the settlement (and not of that person), and references in this section, in relation to a company, to a participator shall be construed accordingly.

(15) Any appeal under section 31 of the Management Act involving any question as to the extent for the purposes of this section of a person’s interest as a participator in a company shall be to the Special Commissioners.”

(10) In paragraph 1(3) of Schedule 5 to the Taxation of Chargeable Gains Act 1992 (application of section 86 to section 13 gains)—

(a) in paragraph (a), for “hold shares in a company which originate” there shall be substituted “are participators in a company in respect of property which originates”;

(b) in paragraph (b), for “the shares” there shall be substituted “so much of their interest as participators as arises from that property”; and

(c) at the end there shall be added—

“Subsections (12) and (13) of section 13 shall apply for the purposes of this sub-paragraph as they apply for the purposes of that section.”

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(11) This section applies to gains accruing on or after 28th November 1995.